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May 7, 2001

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MAY - 7 2001

VIA HAND DELIVERY

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

90-571

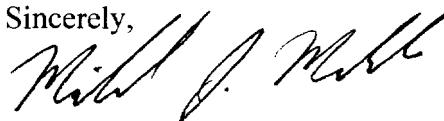
**Re: Telecommunications Relay Services and the Americans with Disabilities Act
of 1990**

Dear Ms. Salas:

Enclosed for filing in the above-captioned matter, please find an original and four (4) copies of the Comments of Telecommunications for the Deaf, Inc., by its undersigned counsel, the Consumer Action Network, and the National Association for the Deaf, in the above-referenced proceeding.

Please acknowledge receipt by date-stamping the enclosed extra copy of this filing and returning it to me in the envelope provided. If you have any questions regarding this filing please contact me at (202) 295-8338.

Sincerely,



Michael J. Mendelson

Enclosures

cc: Pam Slipakoff (Network Services Division)

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List A B C D E

Before the
Federal Communications Commission
Washington, D.C. 20554

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MAY - 7 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Telecommunications Relay Services
And the Americans with Disabilities
Act of 1990

CC Docket No. 90-571 /

**JOINT COMMENTS OF
TELECOMMUNICATIONS FOR THE DEAF, INC.,
THE CONSUMER ACTION NETWORK, AND
THE NATIONAL ASSOCIATION OF THE DEAF**

Telecommunications for the Deaf, Inc. ("TDI"), by its undersigned counsel, the Consumer Action Network ("CAN") and the National Association of the Deaf ("NAD"), respectfully submit the following comments in response to the Federal Communication's Commission's ("Commission") Second Further Notice of Proposed Rulemaking, released on March 16, 2001, regarding the above-captioned proceeding.¹

I. INTRODUCTION

A. Telecommunications for the Deaf, Inc.

TDI is a national advocacy organization actively engaged in representing the interests of the twenty-eight million Americans who are deaf, hard of hearing, late deafened, and deaf-blind. TDI's mission is to promote equal access to media and telecommunications for the aforementioned constituency groups through consumer education and involvement, technical assistance and consulting, application of existing and emerging technologies, networking and collaboration, uniformity of standards, and

¹ *In the Matter of Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Second Further Notice of Proposed Rulemaking, 66 Fed. Reg. 18059 (April 5, 2001), released March 16, 2001.

national policy development and advocacy. TDI asserts that only by ensuring equal access will the twenty-nine million Americans who are deaf, hard of hearing, late deafened, and deaf-blind be able to enjoy the opportunities and benefits of the telecommunications revolution to which they are entitled. Furthermore, only by ensuring equal access for all Americans will society benefit from the myriad skills and talents of persons with disabilities.

B. The Consumer Action Network

CAN is a coalition of national organizations of, by, and for the deaf, hard of hearing, late-deafened, and deaf-blind that seeks to protect and expand the rights of individuals who are deaf, hard of hearing, late-deafened, and deaf-blind in education, employment, telecommunications, technology, health care, and community life. The member organizations of CAN include the American Association of the Deaf-Blind, the American Society for Deaf Children, the American Deafness and Rehabilitation Association, the Association of Late-Deafened Adults, the Conference of Educational Administrators of Schools and Programs for the Deaf, Deaf Seniors of America, Gallaudet University Alumni Association, Jewish Deaf Congress, NAD, National Black Deaf Advocates, National Catholic Office of the Deaf, Registry of Interpreters for the Deaf, TDI, United States Deaf Sports Federation, and WGBH in Boston, Massachusetts.

C. The National Association of the Deaf

The NAD is the nation's oldest and largest constituency organization safeguarding the accessibility and civil rights of twenty-eight million deaf, hard of hearing, late deafened, and deaf-blind Americans in a variety of areas, including education, employment, health care, and telecommunications. A private, non-profit

organization, the NAD is a dynamic federation of state associations and organizational affiliates and direct members. Primary areas of focus include grassroots advocacy and empowerment, captioned media, deafness-related information and publications, legal rights technical assistance, policy development and research, and youth leadership development. The NAD works closely with deafness related national organizations and is a member of several coalitions representing the interests of deaf, hard of hearing, late deafened, and deaf-blind individuals.

II. BACKGROUND

A. Requirements of the Americans with Disabilities Act of 1990

Title IV of the Americans with Disabilities Act of 1990 (“ADA”), in relevant part, requires common carriers to provide telephone services to deaf, hard of hearing, late-deafened, or deaf-blind individuals that are functionally equivalent to services available to individuals without such disabilities.² Under the ADA, the Commission must establish standards to ensure that carriers provide telecommunications relay services (“TRS”) in a manner that is functionally equivalent to non-TRS telephone services. The Commission interpreted the ADA’s functional equivalency requirement as placing the burden on TRS providers to prove that they cannot comply with the ADA’s requirements for certain telephone calls, including coin sent-paid calls from public payphones, because the requirements are technically infeasible.³

² See 47 U.S.C. § 225 (2000).

³ Telecommunications Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act of 1990, *Report and Order and Request for Comments*, CC Docket No. 90-571, 6 FCC Rcd 4657 (1991).

B. Compliance with the ADA: Industry Action

Because of the technical difficulties involved, the Commission repeatedly has suspended the requirement that TRS providers be able to handle coin sent-paid calls from payphones. Soon after the first suspension order, an industry team developed the Coin Signaling Interface (“CSI”), to provide an interface for the rating of coin sent-paid calls. However, parties that filed argued that CSI had significant drawbacks and was not a feasible solution to the problem. In 1995, carriers suggested an Alternative Plan, which the Commission allowed the carriers to follow from 1995 to 1997. From 1997 to 2000, the Commission issued orders every year suspending the coin sent-paid requirement.

C. Functional Equivalency

TDI, CAN, and NAD assert that functional equivalency, as mandated by the ADA, requires TRS providers to allow consumers to make and receive TRS calls with the same benefits that are available to non-hearing impaired individuals, including selection of a preferred service provider and choice of payment options. Furthermore, TRS consumers should not be burdened by lengthy delays, extra costs, or inferior services simply because they are deaf, hard of hearing, late-deafened, or deaf-blind. If deaf, hard of hearing, late-deafened, and deaf-blind individuals are to participate in and benefit fully from modern telecommunications, the Commission must ensure that the statutory requirements for functional equivalency are met.

III. THE PROPOSED RULES

A. Payment Methods

1. Local Calls

TDI, CAN, and NAD support the Commission's proposal to require carriers to provide local payphone calls made through TRS centers on a cost-free basis. Ensuring that TRS users do not pay more than non-TRS users for comparable calls is a crucial element of functional equivalency. Specifically, TDI, CAN, and NAD support the Commission's proposal to allow TRS users to provide the telephone number they wish to call before providing a payment method. As the Commission noted, this solution would alleviate the necessity of providing the access number for a prepaid card if the call is local, ensuring that TRS users will not be charged long-distance rates on their prepaid cards for local calls. TDI, CAN, and NAD also agree that consumer education programs are essential to explain to the TRS user community how and when to use prepaid cards, specifically that they should not be used to make local calls.

2. Toll Calls

While TDI, CAN, and NAD applaud the Commission's effort to provide TRS users with more payment method options, the exemption for prepaid cards does not meet the ADA's requirement for functional equivalency. TDI, CAN, and NAD support the Commission's proposal to require carriers to allow the use of calling cards, collect, or third-party billing for toll calls from payphones. In addition, TDI, CAN, and NAD agree that carriers should be required to charge the lower of the coin sent-paid rate or the calling card, collect, or third-party billing rate. However, functional equivalency

necessarily entails allowing TRS users to make calls at a cost equivalent, and in a manner similarly convenient, to calls made by their non-hearing impaired counterparts.

Exempting prepaid cards from the Commission's proposed rules would bar TRS consumers from access to the benefits that prepaid cards offer. Prepaid cards may provide the lowest rate for toll calls, especially those of shorter duration, because they avoid the up-front surcharge of some other methods, such as credit cards. The exemption, therefore, effectively impedes the ability of TRS users to gain the benefit of a potentially cost-saving option that is available to all other American telecommunications consumers. Precluding TRS consumers from the potential financial benefits of prepaid cards is especially troublesome, because the majority of deaf, hard of hearing, late deafened, and deaf-blind Americans live below the poverty line. In addition, prepaid cards offer consumers an alternative payment method that may be the most convenient option under certain circumstances, such as during an emergency or while travelling. Consumers can purchase a prepaid card spontaneously, without the level of commitment required to purchase a calling card. Furthermore, prepaid cards allow a consumer to bear the cost of his or her call, unlike collect calls, which require another party to pay the charges. Prepaid cards provide consumers with an autonomous and often cost-efficient method of paying for toll calls. TDI, CAN, and NAD contend that all deaf, hard of hearing, late deafened, and deaf-blind Americans should have the option to purchase and use prepaid cards as an efficient method for TRS, TTY-to-TTY, or voice-to-voice calls. For these reasons, TDI, CAN, and NAD assert that the exemption for prepaid cards from the Commission's proposed rules does not meet the ADA's statutory mandate of functional equivalency.

TDI, CAN, and NAD assert that it is feasible to require carriers to match the lowest rate offered by prepaid cards. As the Commission noted, TRS payphone calls made by any payment method accounted for less than two percent of all TRS calls made in 1996. Because calls made with prepaid cards constitute only a fraction of the already small number of TRS payphone calls, the cost to carriers of matching the lowest prepaid card rate would be minimal. The Commission's proposed rules would also negate the time- and cost-intensive effort of altering the entire network, as would have been necessary under the Coin Signaling Interface solution originally proposed by the industry team. TDI, CAN, and NAD assert that relative financial effect on carriers would be slight, while the financial consequences for TRS users vis-à-vis non-TRS users would be significant. Requiring carriers to match the lowest prepaid card rate is therefore feasible and would, in fact, do much to further the functional equivalency mandate of the ADA.

TDI, CAN, and NAD support the Commission's proposal that carriers may continue to impose surcharges on payphone calls but that the surcharge and calling card rate must not total more than coin sent-paid rate. In addition, TDI, CAN, and NAD assert that, if a TRS call reaches an answering machine or interactive voice responsive system and there is not sufficient time to leave a message, TRS users should be charged for only one toll payphone and not for any subsequent calls necessary to leave a message. TDI, CAN, and NAD endorse educational efforts to explain how to make cost-efficient TRS calls from payphones, including but not limited to articles in newsletters and magazines of organizations that serve the TRS user community, materials distributed at public events on TRS-related service, and information in TRS periodicals and promotional materials. Finally, TDI, CAN, and NAD welcome further industry innovation and

creativity regarding new payment methods for use by TRS consumers. If new payment methods, such as smart cards, are in fact developed, TDI, CAN, and NAD would support requiring these payment methods to be equal or lower than the coin sent-paid rate.

B. Consumer Education Programs

TDI, CAN, and NAD support the Commission's proposal that carriers consult regularly with representatives of the TRS user community regarding the best methods for carrying out the proposed measures and to determine the effectiveness of the consumer education programs. Functional equivalency cannot be achieved without effectively educating TRS consumers about their payphone options. Specifically, carriers should consult and discuss issues nationwide with TRS providers, the National Association of State Relay Administrators, and the Telecommunications Equipment Distribution Program Administrators. In addition, carriers should continue their ongoing dialogue on general TRS issues with national organizations such as CAN, TDI, NAD, Self Help for the Hard of Hearing, the Alexander Graham Bell Association for the Deaf and Hard of Hearing, the Association for Late-Deafened Adults, and the American Association for the Deaf Blind. TDI, CAN, and NAD also suggest that carriers should consult with the Consumer/Disability Telecommunications Advisory Committee ("Committee") created by the Commission. TDI, CAN, and NAD hope that the Committee will find it necessary to establish a subcommittee to focus exclusively on TRS issues, including period review of coin sent-paid issues. Furthermore, TDI, CAN, and NAD recommend that the Committee, via its TRS subcommittee, coordinate its efforts with those of the Commission's Technological Advisory Board ("Board") on a regular basis.

In addition, TDI, CAN, and NAD support more extensive involvement of state relay administrators with representatives of their respective state or local organizations that serve the deaf, hard of hearing, late deafened, and deaf-blind community. As discussed in greater detail below, TDI, CAN, and NAD encourage state advisory councils to revisit coin sent-paid TRS issues on at least an annual basis as part of their state TRS review and evaluation efforts. TDI, CAN, and NAD assert that it is important to maintain regular lines of communication between the national and state levels, including the state TRS administrators, and the user communities who benefit directly from TRS.

TDI, CAN, and NAD also support the proposal that carriers be required to submit a report to the Commission detailing compliance with the outreach program twelve months after adoption of the final rules in this proceeding. While agreeing that no further reporting requirements are necessary for carriers in compliance with the Commission's rules, TDI, CAN, and NAD assert that state TRS administrators should provide periodic reports to the Commission as part of their TRS certification process. TDI, CAN, and NAD contend that placing the burden on state TRS administrators will provide an effective method of data sharing and understanding the full impact of the TRS rules.

Because effective education and outreach is a vital component in achieving functional equivalency, TDI, CAN, and NAD applaud and generally support the Commission's commitment to consumer education. Although TDI, CAN, and NAD agree that a consumer education letter with instructions for making payphone calls would be valuable to TRS consumers, they assert that current TRS providers would be better able than carriers to shoulder the task of dissemination. State and Commission monitoring of the dissemination would ensure the effectiveness of the effort. Second,

TDI, CAN, and NAD emphasize that industry participants must coordinate and cooperate more effectively if carriers are to participate meaningfully in local, regional, and national conferences of organizations that represent deaf, hard of hearing, late deafened, and deaf-blind individuals. TDI, CAN, and NAD encourage the members of the telecommunications industry to develop a comprehensive approach to these conferences by consistently using interactive demonstrations, dialogue, exhibits, and programs to educate affected consumers. Third, because few individuals know how to operate a TTY payphone, TDI, CAN, and NAD support the requirement of placement of instructions for making TRS calls on or near TTY payphones in public areas. Fourth, although not all TRS users have access to computers, TDI, CAN, and NAD welcome the development of Internet web sites that provide information on making TRS payphone calls. Finally, TDI, CAN, and NAD support the placement in telephone directories of step-by-step instructions for making TRS calls from payphones.

In addition, TDI, CAN, and NAD suggest that the industry should set up demonstrations at shopping malls, public transit facilities (such as airports, train stations, bus stations, and subway stations), and sports arenas. TDI, CAN, and NAD appreciate the need to coordinate outreach events with similar efforts required in other TRS proceedings and therefore support introducing the coin sent-paid TRS service feature as part of the TRS outreach package. TDI, CAN, and NAD look forward to further outreach proposals by the Commission in other TRS proceedings.

C. TTY-to-TTY Calls from Payphones

TDI, CAN, and NAD support the Commission's proposal that TRS users must be able to make TTY-to-TTY calls from payphones by using their preferred carrier.

Currently, most TRS users cannot choose a service provider to process their long-distance calls via TRS; instead, they must use only the carriers that have registered with their TRS providers. There will be no functional equivalency unless TRS users, like all other telecommunications consumers, have the ability to select their carrier of choice.

TDI, CAN, and NAD assert that the Commission should actively coordinate with state relay administrators regarding enforcement of registration by common carriers with TRS providers. Recognizing that the Commission does not have expansive enforcement resources, TDI, CAN, and NAD suggest that the Commission levy fines on those carriers that do not register. As discussed above, TDI, CAN, and NAD emphasize that consumer education by the industry team is critical, because TRS consumers must be aware that common carriers must register with TRS providers. Allowing TRS consumers more carrier selection options would help to achieve the goal of functional equivalency by maximizing savings in toll TRS calls from payphones and providing the opportunity to enjoy unique service features.

D. Monitoring Technological Solutions to the Coin Sent-Paid Issue

TDI, CAN, and NAD support the Commission's proposal to revisit the issue of how to meet the ADA's mandate if technology is developed that would allow the provision of functionally equivalent coin sent-paid service. Specifically, TDI, CAN, and NAD support the Commission's proposal that carriers must file reports periodically when new technological developments arise. In addition, TDI, CAN, and NAD welcome the participation of the Committee in discussing future technological developments. TDI, CAN, and NAD assert, however, that a TRS subcommittee would be the most effective vehicle for addressing TRS issues. Furthermore, TDI, CAN, and NAD emphasize that

the Committee should coordinate with the Board regarding advances in TRS-related technology. Effective coordination between the Committee and the Board would allow the Committee to address transitional issues that the Board could consider when developing transitional solutions. In this way, the Committee and the Board would be able to take into account up-front the issues facing deaf, hard of hearing, late deafened, and deaf-blind individuals when considering future technological developments.

E. Impact of the Recent Commission Decision on Proposed Rules

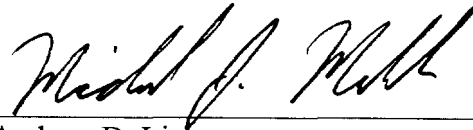
TDI, CAN, and NAD agree that the 1996 Orders will not affect the Commission's proposed rules regarding TRS calls from payphones because local calls made by TRS users will remain free and should not affect carriers' ability to provide payphone access to TRS users. The industry may develop new means of processing payphone calls, however, and TDI, CAN, and NAD express concern that these new developments may not be regulated. TRS users may lose access to such unregulated services, such as payphone kiosks in public places.

Finally, TDI, CAN, and NAD support the Commission's proposal to allow TRS providers to seek reimbursement from the Interstate TRS Fund for free local TRS calls. TDI, CAN, and NAD assert that, because TRS business constitutes only a slight fraction of the total telephone market, reimbursement will provide the necessary incentive for immediate technological improvements in TRS service features. Reimbursement from the Interstate TRS Fund will promote developments that will allow TRS users to make more functionally equivalent calls.

III. CONCLUSION

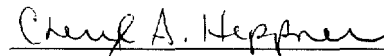
TDI, CAN, and NAD are encouraged by the Commission's efforts to solve the problem of how to make TRS calls from payphones functionally equivalent to non-TRS calls and urge the Commission to continue its efforts to develop solutions to the issues facing deaf, hard of hearing, late deafened, and deaf-blind Americans.

Respectfully Submitted,



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